

Service Date: January 26, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application of)	UTILITY DIVISION
MONTANA POWER COMPANY for)	
Approval of its Electric Utility Restructuring)	DOCKET NO. D97.7.90
Transition Plan Filed Pursuant to Senate Bill 390.)	ORDER NO. 5986n

ORDER ON RECONSIDERATION

Background

1. On November 24, 1999, the Montana Public Service Commission (Commission) issued Order No. 5986m, Order on Montana Power Company's Demonstration of Transition Costs and Tier 2 Issues. Montana Power Company (MPC) had proposed in its July 1, 1999 Tier 2 transition plan filing to track certain types of transition costs. The Commission determined that MPC's proposal is not consistent with the requirements in the Electric Industry Restructuring and Customer Choice Act (Act), Title 69, Chapter 8, Montana Code Annotated (MCA). The Commission directed MPC to amend its Tier 2 transition plan to specifically identify all transition costs the Company seeks to recover. The Commission also determined that market power and revenue requirement issues are appropriate issues to consider in the Tier 2 proceeding.

2. MPC submitted a Motion for Reconsideration of Order 5986m on December 16, 1999. Large Customer Group (LCG), Montana Consumer Counsel (MCC), the Montana Department of Environmental Quality (DEQ) and Big Sky Power submitted responses to MPC's motion for reconsideration.

3. At a duly noticed work session on January 19, 2000, the Commission denied MPC's Motion for Reconsideration and affirmed its decisions in Order No. 5986m on the issues of tracking transition costs and revenue requirements. The Commission granted MPC's Motion on the issue of market power.

Findings of Fact**MPC's Motion for Reconsideration**

4. MPC asserted that the Commission did not focus on the legislative policy in the Act that the interests of customers should be protected and the financial integrity of the utility should be fostered. (§ 69-8-102, MCA.) MPC stated the Commission cannot ignore this requirement. According to MPC, incorrect predictions of future market prices used to demonstrate the level of qualifying facility (QF) transition costs could dramatically affect the interests of Montana consumers and the financial integrity of MPC. Because the Public Utility Regulatory Policy Act (PURPA) and the Commission required MPC to enter into the QF contracts, MPC maintained that it should not suffer financial harm when the costs of these contracts are deregulated. According to MPC, the legislature envisioned the possibility that assets could be sold and did not define a presumed path. Therefore, MPC's flexibility and fair balance arguments are still relevant, and the Commission must reconsider its decision.

5. Repeating its belief that transition charges have no effect on competition, MPC asserted that the Commission incorrectly found that "[h]ow transition costs are established can affect whether consumers and alternative suppliers find it attractive to participate in markets, and, therefore, when, or whether, competition will emerge." In its motion, MPC said it tested the Commission's finding at a December 1999 suppliers meeting. MPC showed suppliers unbundled production rates for the GS-2 Substation customer class, including a CTC-RA, CTC-QF and residual power supply. MPC asked the suppliers whether they needed to know the final outcome of the CTC rates or just the residual power supply rate to offer alternative supply products to MPC customers. According to MPC, the suppliers agreed that they did not need to know the future transition costs in order to compete.

6. According to MPC, QF-related transition costs need not be netted against other costs at the time the Commission issues its final order. MPC argued that the Commission incorrectly determined that "[a] net calculation of transition costs cannot occur if one piece is based on a net present value basis (value of generation assets) while other components are not valued at all (QF-related transition costs)."

7. MPC maintained that the Commission's decision that "rate moratorium" means

rate cap was not based on a legal analysis and ignores legislative history. MPC restated its arguments that “rate moratorium” is synonymous with “rate freeze.”

8. MPC asked the Commission to reconsider its decision on the issue of market power analyses. MPC suggested that the Commission does not have the authority to require a market power analysis since the Act does not require MPC to perform such an analysis. MPC stated that it will try to accommodate the Commission’s “request,” but with limited staff resources, it cannot guarantee it will provide the requested discussion.

LCG Response

9. According to LCG, the Act is clear that QF-related costs are subject to netting requirements. Section 69-8-103(30)(a), MCA applies the requirement for “net verifiable” costs equally to “generation-related and electricity supply costs” (emphasis in LCG response). LCG said that unless MPC is prepared to argue that QF power purchase costs are not electricity supply costs that may become unrecoverable, MPC’s argument is misplaced.

10. LCG stated that MPC’s interpretation of what suppliers said, or chose not to say, at a meeting MPC conducted should be accorded no evidentiary weight. Whether or not third parties not present before the Commission think transition costs should be known, the Act requires that the Commission determine net transition costs in modifying, approving or denying MPC’s transition plan. LCG asserted that the legislature did think Montana customers should know future transition cost in order to make wise decisions in a competitive market.

11. LCG supported the Commission’s interpretation of the rate moratorium. MPC had acknowledged the Commission’s finding that a utility is not allowed to recover costs higher than actual costs under existing regulation. However, LCG disagreed with MPC’s conclusion that “the converse is also equally valid: a utility cannot recover costs lower than its actual costs under existing regulation.” LCG asserted that MPC missed the point; the Commission did not say a utility could be forced to collect less than its actual costs. However, the Act does not forbid lower rates if actual costs are lower. The legislature could have said utilities may not charge higher or lower rates, but it did not. The Commission has received ample testimony in this proceeding to support the conclusion in Order 5986m that the Act permits rate reductions where justified.

MCC response

12. MCC stated that the Commission correctly determined that revenue requirement issues should be considered in the Tier 2 proceeding. MCC disagreed with MPC's assertion that the Commission reached its decision without a legal analysis. In Order No. 5986m, ¶ 53, the Commission adopts the view that the Act establishes a moratorium on rate increases and nothing prohibits rate decreases where justified. MCC stated that § 69-8-211(6), MCA requires utilities to implement a rate moratorium "as follows." What follows in subsections (a) and (b) are restrictions on increasing rates. MCC stated that if the legislature had wanted to preclude rate reductions it could have easily placed restrictions on changing rates.

13. MCC stated that to the extent MPC is proposing that QF costs need not be netted with other categories of transition costs, MCC concurs with the LCG analysis. MCC asserted that all categories of transition costs are subject to a net determination.

DEQ Response

14. According to DEQ, MPC's motion offers nothing new to the debate and disregards the plain language found in the Act. DEQ supported LCG's response and recommended that the Commission deny MPC's motion for reconsideration.

15. DEQ asserted that MPC misconstrued the testimony of DEQ witness Dr. Larry Nordell. DEQ stated that MPC ignored Dr. Nordell's testimony that "[i]f the overall generating resource stranded costs are negative (that is, the plant produces stranded benefits rather than costs), MPC must net those benefits against its other categories of stranded costs (the QF costs and the regulatory asset stranded costs), or against its retail rates." Direct Testimony, p. 17. DEQ asserted that MPC's selected quote was taken out of context and does not support the motion for reconsideration.

Big Sky Power Response

16. Big Sky Power asserted that MPC did not provide the Commission any new persuasive evidence that supports the motion for reconsideration. Big Sky Power reiterated the arguments put forth in its initial brief and recommended that the Commission deny MPC's motion for reconsideration.

Commission Decision**QF Tracking**

17. MPC asserted that the Commission did not focus on the requirement in § 69-8-102(3), MCA, that the interests of Montana consumers should be protected and the financial integrity of utilities should be fostered. MPC maintained that the Commission cannot ignore this provision.

18. The Commission did not ignore Section 69-8-102, MCA, which is a statement of the legislature's findings and policy with respect to electric industry restructuring. In Finding of Fact No. 41, Order No. 5986m, the Commission specifically addressed the goal of fairly balancing the interests of Montana consumers and MPC shareholders. However, the Commission has only those powers expressly conferred upon it by the legislature. In Findings of Fact Nos. 42 and 43, the Commission explained the specific requirements that paint the "detailed picture" of the restructuring process and the determination of transition costs. The Act specifically requires MPC to demonstrate the net, unmitigatable transition costs it seeks to recover. The Commission must approve *the amount* of transition costs MPC may recover, the charges that will facilitate recovery, and the length of the recovery period. Furthermore, the Act envisioned that the Commission would make these determinations and issue a final order by July 1, 1998.

19. MPC argued that incorrect predictions of future market prices could affect the interests of Montana consumers and the financial integrity of MPC, violating § 69-8-102(3), MCA. However, the legislature apparently believed that the interests of Montana consumers and MPC's financial integrity could be adequately protected while using estimates of future market prices, in that § 69-8-211(2)(b), MCA specifically identifies estimating future market values as one acceptable method for a utility to demonstrate its transition costs. Conversely, the act never discusses transition cost tracking mechanisms. Nor does the Act discuss a situation where a comprehensive net determination of transition costs is not required, a situation that necessarily follows from MPC's proposed tracking mechanism.

20. The Commission did not ignore the Act's policy provisions. The Act's policy provisions must be read together with all the requirements for establishing and recovering

transition costs. The specific requirements in the Act do not provide for the tracking of transition costs. The Commission must protect the interests of Montana consumers and the financial integrity of the utility within the framework created by the Act.

21. MPC argued that the Act contemplates the possibility that assets may be sold. Therefore, the Act does not define a presumed path, and MPC's flexibility and fair balance arguments are still relevant and must be reconsidered.

22. The Commission agrees that the Act contains references to a utility's ability to sell its generation-related assets. The Commission also agrees that the Act does not define a path in terms of whether or when a utility must sell its assets or how long it should retain its assets. However, it is clear from the transition cost requirements in the Act, as well as MPC's own acknowledgement in its initial brief, that a generation sale was not presumed, or contemplated, prior to a Commission determination of the amount of MPC's transition costs. MPC asserted in its initial brief that "neither the legislature nor their constituents, including MPC, ever thought the Company would sell its assets." (Emphasis added).

23. The Act gives the utility discretion to choose to sell its generation assets, and prohibits the Commission from requiring such a divestiture. § 69-8-204(2), MCA. The Act is void of any guidance on how to accomplish the prescriptive procedure for determining transition costs and charges and implementing customer choice and a meaningful transition period in the context of a generation asset sale prior to a final order on the transition plan.

24. The legislature expected the Commission to issue a final order on MPC's transition plan on or before July 1, 1998. In this order, the Commission would remove the generation assets and electricity supply costs from rate base, initiate large customer choice and pilot programs for small customers, approve an amount of transition costs, establish transition charges and transition cost recovery periods and fix the rate moratorium prices. The legislative intent is set forth throughout the Act: the definitions of "transition cost recovery period" and "transition period" in § 69-8-103, MCA, the pilot program requirements in § 69-8-104, MCA, the customer choice requirements in § 69-8-201, MCA, the requirement in § 69-8-202, MCA that the Commission process the transition plan in nine months, and the transition cost and rate moratorium requirements in § 69-8-211, MCA.

25. MPC asserted in its Motion for Reconsideration that the legislature did not envision all the details surrounding a sale. This assertion obscures what even MPC has acknowledged the legislature did not envision. The legislature did not envision a sale, period. The transition cost requirements in the Act are a product of what the legislature did envision, MPC-ownership of its generation assets at the time the Commission issued a final order. The Act's requirements are specific and reflect the future the legislature envisioned. The Commission does not have the power to change the Act to reflect a future different from what the legislature envisioned when the Act was written.

26. In MPC's meeting with competitive suppliers in December 1999, MPC presented the suppliers with unbundled rates for the GS-2 substation class, including transition charges for regulatory assets and qualifying facilities and a "residual" power supply price. This information was attached to MPC's motion for reconsideration as Exhibit 1. MPC asked the suppliers whether they needed to know the final transition charges for regulatory assets and QFs, or just the residual power supply price, to offer alternative power supply to Montana customers. According to MPC, the suppliers agreed that they did not need to know the future transition costs. In its Motion on Reconsideration, MPC argued that the unbundled generation cost is separable from transition costs, is fixed and will not change even if transition costs change as a result of the Commission's Tier 2 order. MPC further argued that the Commission was incorrect in finding that how transition costs are set may affect the development of competition.

27. The Commission agrees with LCG that statements made by suppliers outside this proceeding should not be given any evidentiary weight. The Commission has not established any CTCs or "residual" power supply price for any customer class. MPC's Exhibit 1 did not include work papers that described how the CTCs were calculated. The purpose of the Tier 2 proceeding is to determine CTCs and residual power supply prices. It is presumptuous to assume that the residual power supply price included in Exhibit 1 is the price that will result when the Commission issues its final order in this proceeding. MPC's arguments will be considered, along with those of the intervenors, as the Tier 2 case progresses.

28. In Order No. 5986m, the Commission maintained that tracking transition costs was inconsistent with the Act partly because tracking and netting of transition costs are not

compatible. The Commission stated that a net calculation of transition costs is not possible if one piece is based on a net present value while other pieces are not valued at all. However, MPC has maintained that the netting requirements in the Act do not require netting QF-related transition costs against other types of transition costs, such as hydro and thermal costs.

29. The Commission agrees with LCG that the netting requirements in the Act are clear. The Act requires netting all categories of transition costs. Section 69-8-103(30), MCA defines the term “transition cost.” Subpart (a) describes transition costs. Subpart (b) provides specific examples of qualifying transition costs. Section 69-8-103(30), MCA makes no distinction between transition costs that are subject to netting and transition costs that are not. Section 69-8-211(2), MCA requires that the value of all generation assets and electricity supply costs must be considered on a net basis. QF contracts are electricity supply costs and must be considered on a net basis along with all other generation assets and supply costs, including hydro and thermal assets. There is absolutely no indication in §§ 69-8-103(30) and 69-8-211(2), MCA that the net determination of transition costs applies on a limited basis to select categories of transition costs.

30. The Commission denies MPC’s request for reconsideration on the issue of the tracking of transition costs and affirms its decision in Order No. 5986m.

Market Power

31. In Finding of Fact No. 49, Order No. 5986m, the Commission acknowledged that the Act does not specifically require MPC to submit a market power analysis as part of its transition plan. In Finding of Fact No. 51, the Commission stated its interest in a discussion in the Tier 2 part of this case that would assist the Commission in ultimately determining whether competition is workable, pursuant to § 69-8-403(2), MCA. The Commission *asked* MPC to initiate this discussion by providing testimony on market power issues in its amended Tier 2 filing. In the Order section, ¶ 2, the Commission stated that MPC *shall* initiate a discussion on market power. In its motion, MPC asked the Commission to reconsider its order on market power issues. MPC said that while the Commission has no authority to direct MPC to perform a market power analysis, it would try to accommodate the Commission’s request.

32. The Commission acknowledges that there is no explicit requirement in the statutes for MPC to perform a market power analysis as part of MPC's electric utility transition plan. Without conceding that the Commission lacks authority to direct MPC to perform the analysis, the Commission accepts MPC's offer to try to accommodate the request in Finding of Fact No. 51, Order 5986m. On reconsideration, the Commission removes the mandated requirement that MPC file testimony on market power issues in its amended Tier 2 filing.

Revenue Requirements

33. MPC restated its argument that the term "rate moratorium" means a rate freeze. None of the parties in this case agree with MPC's position on the issue of including revenue requirements as an issue in this Docket. In Order No. 5986m, the Commission determined that a utility is not allowed to recover costs higher than its actual costs under existing utility regulation. MCC pointed out that 69-8-211(6), MCA requires utilities to implement a rate moratorium "as follows." What follows in subsections (a) and (b) are restrictions on *increasing* rates. MCC noted that if the legislature had wanted to preclude rate reductions it could have easily placed restrictions on *changing* rates. The legislature did not include a prohibition against rate reductions in the Act.

34. On January 6, 2000, MPC filed a request to reduce rates by \$16,722,212 to reflect the elimination of generation-related regulatory asset costs, which resulted from the sale of generation assets. The sale produced proceeds in excess of book value. MPC stands to receive an additional \$150 million in proceeds if Puget Sound Energy and Portland General Electric close sales of about 1,000 megawatts of Colstrip output to PP&L Montana. With the January 6, 2000, filing MPC acknowledges that a revenue requirement decrease is appropriate as a result of the sale of generation. Thus, in asking to reduce rates, MPC is demonstrating that revenue requirements are an issue in the Tier 2 phase of this case. Further, the filing indicates that MPC believes that rates can be reduced under the Act.

35. MPC requested that the Commission identify which revenue requirement issues have been made moot by the sale of generating assets. The Commission has no information about the revenue requirement issues that parties may identify when they file their testimony, which will follow MPC's testimony concerning the results of the sale of generation assets.

36. The Commission denies MPC's Motion for Reconsideration to exclude revenue requirements in this Docket and affirms its decision in Order No. 5986m.

CONCLUSIONS OF LAW

1. All Findings of Fact are incorporated in this Order as Conclusions of Law.
2. The Montana Public Service Commission exercises authority over public utilities and the electric utility industry restructuring pursuant to its authority under Title 69, particularly Chapters 3 and 8, MCA.
3. MPC furnishes electric service for consumers in the State of Montana and is a vertically integrated public utility under the regulatory jurisdiction of the Montana Public Service Commission. §§ 69-3-101 and 69-3-102, MCA.
4. The Commission has the general power to govern the modes of procedure, to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers conveyed on it pursuant to Title 69, Chapter 3, MCA, including rendering an order on legal issues in a docket involving a regulated public utility. § 69-3-103, MCA.
5. The Commission has the authority under Title 69, Chapter 8, MCA, to establish the procedures necessary in processing a public utility's application for approval of its transition plan on restructuring, including making legal determinations on the plan and directing a public utility to amend its plan to comply with Title 69, Chapter 8, MCA. § 69-8-202, MCA.

ORDER

WHEREFORE, the Commission issues the following order on reconsideration:

1. Montana Power Company's Motion for Reconsideration of the Commission's decision in Order 5986m on the issue of the tracking of transition costs after a final order on the Tier 2 proceeding is denied.
2. MPC's Motion for Reconsideration of the Commission's order that MPC shall initiate discussion on market power issues is granted, and the decision in Order No. 5986m is modified as set forth in ¶¶ 9 and 10.
3. MPC's Motion for Reconsideration of the Commission's decision that revenue requirements issues will be considered in Tier 2 is denied.

DONE AND DATED this 25th day of January, 2000, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.